IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 4382 of 2000

For Approval and Signature:

HONOURABLE MR.JUSTICE AKIL KURESHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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KANJIBHAI BHAVANBHAI DESAI - Petitioner(s)
Versus
RAMESHBHAI CHANDUBHAI PATEL & 3 - Respondent(s)

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Appearance :
MR JITENDRA M PATEL for Petitioner
MR AK CLERK for Respondent(s) : 1,
RULE SERVED for Respondent(s) : 1.2.1,1.2.3
MR AJ PATEL for Respondent(s) : 1.2.2
MS KRINA CALLA, AGP for Respondent(s) : 2 - 4.

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CORAM : HONOURABLE MR.JUSTICE AKIL KURESHI

Date : 14/09/2007

ORAL JUDGMENT

Heard learned advocate Shri J.M.Patel for the petitioner, Mr.A.K.Clerk for respondent No.1 and learned AGP Mrs.Calla for respondent Nos.2 to 4.

2. In this petition, a short question of interpretation of a legal provision arises. To appreciate the controversy, a few facts may be noted at this stage.

3. The petitioner claiming to be an agricultural labourer and claiming to be having his residential premises at survey No.28 of village Theltej (admeasuring 2 hectare and 7 Are and 34 sq. mtrs) and being in possesion of 1000 sq. meters of of land appurtenant to his residential premises, approached the Mamlatdar and ALT for declaration that he had become deemed purchaser thereof in terms of section 16 to 18 of the Bombay Tenancy and Agricultural Lands Act, 1948.

3.1 At one stage, the Mamlatdar & ALT refused to entertain the application upon which he approached this Court by filing Special Civil Application No.9435 of 1998, which came to be disposed of by the learned single Judge of this Court by an order dated 26.11.98 refusing to entertain the petition. The petitioner, therefore, filed Letters Patent Appeal No.1451 of 1998 which came to be decided on 7.12.98, wherein the Division Bench of this Court made certain observations which ultimately resulted into the Mamlatdar and ALT, Daskroi taking up the application of the petitioner being Tenancy Case No.25/98 for decision on merits. On this application filed under section 18 of the Bombay Tenancy and Agricultural Lands Act, 1948, the Mamlatdar and ALT by the order dated 14.10.99 declared that the petitioner is entitled to

receive benefits under section 16, 17 and 18 of the said Act. He further provided that the petitioner is entitled to purchase the land occupied by his residential premise and the land appurtenant thereto admeasuring 1000 sq. meters upon payment of Rs.25/- within a period of one year from the date of the order. He, however, in his said order provided that the land so held by the petitioner will be of a restricted tenure under section 43 of the said Act.

4. Aggrieved by the said order, the original land owners approached the Deputy Collector by filing Tenancy Appeal No.144/99. Deputy Collector, however, was of the opinion that the order passed by the Mamlatdar is not appealable. He, therefore, dismissed the appeal filed by the original land-owners by the order dated 9th March 2000.

5. From the pleadings on record, it emerges that there is further revision application filed by the original-land owners before the Gujarat Revenue Tribunal. Learned advocates appearing for the parties submit that the said revision application is still pending. It also appears that there are some other civil proceedings between the parties which are also pending.

6. In this petition, however, the petitioner has challenged a portion of the order passed by the Mamlatdar & ALT by which he was pleased to declare that the land so purchased by the petitioner would be of new tenure land and would carry all restrictions provided under section 43 of the said Act. Insofar as this petition is concerned, therefore, I am concerned only with the legality of the said condition contained in the order passed by the Mamlatdar and ALT.

7. The entire focus is confined to the said condition and

nothing stated in this order will have any bearing on other pending proceedings, including the one stated to be pending before the Gujarat Revenue Tribunal, at the instance of the original land owners against the order passed by the Mamlatdar and ALT. Learned advocate Shri J.M.Patel also submitted that under the Town Planning Scheme, the land originally held by the petitioner has been taken away by the authorities and in lieu thereof, a new final plot is alloted to the petitioner. Be that as it may, in the present proceedings, it is not necessary for me to dwell into these later developments.

8. Section 2(1A) of the said Act defines the term “agricultural labourer” to mean a person whose principal means of livelihood is manual labour on land. Section 2(18) of the said Act defines the term “tenant” and it reads as follows:-

> “18. 'tenant' means a person who holds land on lease and includes --
> (a) a person who is deemed to be a tenant under section 4
> (b) a person who is a protected tenant; and
> (c) a person who is a permanent tenant;
> (d) a person who, after the surrender of his tenancy in respect of any land at any time after the appointed day but before the specified date has continued, or is deemed to have continued, to remain in actual possession, with or without the consent of the landlord of such land till the specified date.”

9. Section 16 of the said Act, inter alia, provides that if in any village a tenant is in occupation of a dwelling house built at the expense of the tenant or his predecessor in title on a site belonging to his land-lord, such tenant shall not be evicted from such dwelling house unless the landlord proves that the dwelling house was not built at the expense of such tenant or his predecessor in title and such tenant makes any three

defaults in the payment of rent, if any, which he has been paying for the use and occupation of such site.

9.1 Section 17 of the said Act puts restriction on the right of a landlord to sell a site referred to in section 16 of the said Act and provides, inter alia, that in such a case, first option of purchasing the site at a value determined by the Tribunal will be given to the tenant.

9.2 Section 17-A of the said Act gives right to the tenant to purchase the site referred to in section 16 under certain circumstances and also lays down the procedure for such purchase by the tenant.

9.3. Section 17B of the said Act, as substituted by the Gujarat Act 5 of 1973 provides, inter alia, that on and with effect from the date as the State Government may by notification in the official gazette specify, every tenant referred to in section 16 shall be deemed to have purchased from his land-lord the site on which dwelling house occupied by such tenant was built and the land immediately appurtenant thereto and necessary for enjoyment of the dwelling house free from all encumbrances at the price to be fixed by the Tribunal not exceeding 20 times the annual rent for the site.

9.4 Section 18 of the said Act provides, inter alia, that the provisions of section 16, 17, 17A and 17B shall apply to the dwelling houses and sites thereof occupied by agricultural labourers and artisans in any village. Section 18 of the said Act reads as follows:-

> "18. The provisions of sections 16, 17, 17A and 17B shall apply
>
> (a) to the dwelling houses and sites thereof occupied by agricultural labourers and artisans in any village;; and

(b) to the lands held on lease in any village by persons carrying on an allied pursuit for the purpose of such pursuit."

Sub-section (1) of section 43 of the said Act provides for certain restrictions on transfer by sale, gift, exchange, mortgage, lease or assignment of land or any interest purchased by the tenant under section 17-B, 32, 32F, 32-I, 32-O, 32-U, 43-1D or 88E without the previous sanction of the Collector and in consideration of payment of such amount as the State Government may determine. Sub-section (1A), (1AA) and (1B) provide for certain exceptions to the main rule laid down in sub-section (1) of section 43 of the said Act with which we are not directly concerned. Sub-section (2) of section 43 provides that any transfer or partition or any agreement of transfer or any land or any interest therein in contravention of sub-section (1) shall be invalid. Relevant provisions of section 43 are reproduced hereinbelow:-

"43(1) No land or any interest therein purchased by a tenant under section 17B, 32, 32F, 32-I, 32-O, 32U, 43-1D or 88E or sold to any person under section 32P or 64 shall be transferred or shall be agreed by an instrument in writing to be transferred, by sale, gift, exchange, mortgage, lease, or assignment, without the previous sanction of the Collector and except in consideration of payment of such amount as the State Government may by general or special order determine; and no such land or any interest, therein shall be partitioned without the previous sanction of the Collector.

xxx
xxx

(2) Any transfer or partition or any agreement of transfer, or any land or any interest therein in contravention of sub-section (1) shall be invalid."

10. From the above statutory provisions, the short question that calls

for consideration in this petition is, whether an agricultural labourer being owner of the land occupied by a dwelling house with land appurtenant thereto can enjoy full ownership thereof without any fetters and legal restrictions or whether it is open and in fact incumbent upon the Mamlatar to put such restrictions as are specified in section 43 of the said Act.

11. Learned advocate Shri J.M.Patel for the petitioner submitted that the petitioner received the land in question by virtue of the provisions contained in section 18 of the said Act. He submitted that the position of an agricultural labourer is vastly different from that of a tenant and that, therefore, restrictions envisaged in section 43 of the said Act on a land purchased by the tenant under the various provisions of the said Act, specifically under sub-section (1) of section 43 cannot be applied in case of an agricultural labourer being owner of the land.

11.1 It was submitted that in section 43(1) of the said Act, Legislature has referred to section 17-B which applies only to tenants becoming owners of land occupied by a dwelling unit and land appurtenant thereto and there is no reference to section 18 which applies to an agricultural labourer. He, therefore, submitted that it was not open for the Mamlatdar to put restrictions on the land of the petitioner.

12. On the other hand, learned AGP Mrs.Calla appearing for the State authorities opposed the petition and submitted that the restrictions imposed by the Mamlatdar are just an proper and are well within his powers. She submitted that the provisions contained in section 16, 17, 17A an 17B apply to any land occupied by a dwelling house and occupied by the agricultural labourer.

13. Learned advocate Shri A.K.Clerk appearing for respondent No.1, representing the interest of the land-owner submitted that the order passed by the Mamlatdar in favour of the petitioner is also at large before the Gujarat Revenue Tribunal and therefore, the title of the petitioner on the land in question has not become final.

14. From the statutory provisions noted above, it would emerge that an agricultural labourer has been made a deemed purchaser of site on which the dwelling house is occupied by him and the land appurtenant thereto and necessary for enjoying of dwelling house. Under sections 16, 17, 17A and 17B of the said Act, the Legislature has provided for certain rights of the tenant to enjoy dwelling house and occupation of such a site unchallenged by the landlord. In section 17, it is provided, inter alia, for preferential right of the tenant to purchase such a site in case the landlord is desirous of selling the same. Under section 17-B of the said Act, the Legislature provided for the tenant to become deemed purchaser of such a site upon his paying a price to be fixed by the Tribunal being a price not exceeding 20 times of the annual rent of the site. In section 18 of the said Act, the Legislature instead of repeating all these provisions made in sections 16, 17, 17A and 17B of the said Act in favour of the tenant, by incorporation, provided that the said provisions shall apply also to the dwelling houses and sites thereof occupied by agricultural labourers and artisans in a village. Thus, all provisions contained in the above-mentioned sections which are made for the protection of the interest of a tenant of his dwelling unit and land appurtenant thereto were made applicable also in case of dwelling house and site thereof occupied by agricultural labourers and artisans in any village.

15. As noted earlier, in respect of the site which the tenant

becomes a deemed purchaser upon completion of the formalities contained in section 17B of the said Act, section 43 of the said Act envisages certain restrictions. Section 43 of the said Act clearly provides that no land or any interest thereon purchased by the tenant under section 17B (besides other sections of the said Act) shall be transferred or agreed to be transferred by sale, gift, exchange, mortgage, lease or assignment without the previous sanction of the Collector.

15.1 Sub-section (2) of section 43 of the said Act provides that any transfer or partition or any agreement of transfer or partition or any land or any interest therein in contravention of sub-section (1) thereto shall be invalid. The legislative philosophy eloquent is that in order to protect the interests of the tenants who become deemed purchasers of agricultural lands which they have been cultivating or of the sites on which their residential houses are located, certain restrictions on imparting such lands have been imposed. When the Legislature has by incorporation adopted all provisions contained in section 16, 17, 17A and 17B of the said Act for giving benefits thereof to dwelling house and site occupied by the agricultural labourer, there is no contrary intention appearing in any of the provisions contained in the said Act to suggest that the ownership of agricultural labourer of land occupied by his dwelling house and land appurtenant thereof should not suffer the same restrictions and rigours contained in sub-section (1)of section 43 of the said Act.

16. It would thus become abundantly clear that by incorporation, the Legislature sufficiently provided for safeguards for the site on which the dwelling house occupied by an agricultural labourer and the land appurtenant thereto of which he becomes a deemed purchaser under section 17-B of the said Act. To my mind, therefore, the Mamlatdar

committed no error in imposing the restrictions contained in section 43(1) of the said Act while giving an opportunity to the petitioner to purchase the land in question by the impugned order.

17. In the result, I find no illegality in the order passed by the Mamlatdar and ALT and the petition, therefore, is dismissed. Rule is discharged with no order as to costs.

(Akil Kureshi, J.)

(vjn)